

**VERIFIED STATEMENT CLAIMING
SMALL ENTITY STATUS
(SMALL BUSINESS CONCERN)**

Attorney Docket No.

T257.312-3

Inventor(s): Vasilios Toutountzis

Title: TERMITE CONTROL

With respect to the invention described in

- ☒ the reissue application filed herewith:
- ☐ application Serial No. _____, filed _____:

I. IDENTIFICATION OF DECLARANT AND ANY RIGHTS AS A SMALL ENTITY

I am:

- ☐ the owner of the small business concern identified below:
- ☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN
ADDRESS OF CONCERN

TERMIMESH AUSTRALIA PTY LTD
10 Westchester Road,

Malaga, 6062 Western Australia, Australia

The above-identified small business concern qualifies as a small business concern as defined in 13 CFR § 121.12, and reproduced in 37 CFR § 1.9(d), for purposes of paying reduced fees under 35 USC §§ 41(a) and (b).

II. OWNERSHIP OF INVENTION BY DECLARANT

Rights under contract or law remain with or have been conveyed to the above-identified concern. If the rights held are not exclusive, each individual, concern or organization having rights to the invention is listed below and no rights to the invention are held by any person who could not be classified as (1) an independent inventor under 37 CFR § 1.9(c) if that person had made the invention, (2) a small business concern under 37 CFR § 1.9(d) or (3) a non-profit organization under 37 CFR § 1.9(e).

(check one)

☒ There is no such person, concern, or organization.

☐ The person, concerns or organizations are listed below:

NAME OF ORGANIZATION _____

ADDRESS OF ORGANIZATION _____

- ☐ Individual
☐ Small Business Concern
☐ Nonprofit Organization

NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities (37 CFR § 1.27).

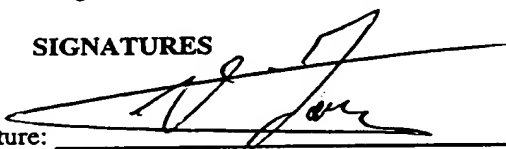
III. ACKNOWLEDGEMENT OF DUTY TO NOTIFY PTO OF STATUS CHANGE

I acknowledge the duty to file, in this application or patent, notification of any change resulting in loss of entitlement to small entity status pursuant to 37 CFR § 1.28(b).

IV. DECLARATION

All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

V. SIGNATURES

Signature: 

Date: 16 - MAY 97

Printed Name: Vasilios Toutountzis

Title: Managing Director

SUPPLEMENTAL DECLARATION

IN ☐ ORIGINAL ☐ NATIONAL STAGE OF PCT APPLICATION
☐ DIVISIONAL ☐ CONTINUATION
☐ CONTINUATION-IN-PART ☒ REISSUE

Attorney Doctus No.

T257.312.3

SPECIFICATION AND INVENTORSHIP IDENTIFICATION

As a below named inventor, I declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and ☒ sole ☐ joint inventor of the subject matter which is described and claimed, and for which a reissue is sought in the present application, on the invention entitled TERMITE CONTROL, the specification of which:

- ☒ was filed on March 30, 1993 as Appln. Serial No. 08/040,305,
- ☒ and was granted as U.S. Patent No. 5,417,017 on May 23, 1995,
- ☒ was filed on May 20, 1997 as Appln. Serial No. 08/859,561,
- ☒ and is amended in the Amendment attached hereto.

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above, together with any amendment submitted herewith. I acknowledge the duty to disclose information which is known to me to be material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56.

PRIORITY CLAIM (35 USC § 119)

I claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)

Number	Country	Day/Month/Year Filed	Priority Claimed
<u>PL 7520</u>	<u>Australia</u>	<u>February 25, 1993</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>PL 6128</u>	<u>Australia</u>	<u>September 4, 1989</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PRIORITY CLAIM (35 USC § 120)

I claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below. Insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35 United States Code § 112, I acknowledge the duty to disclose to the Patent Office all information known to me to be material to patentability as defined in Title 37 Code of Federal Regulations § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

U.S. Serial No.	International Appn. No. (under PCT)	Filing Date	Status (patented, pending, abandoned)
<u>07/575,908</u>	<u> </u>	<u>August 31, 1990</u>	<u>abandoned</u>
<u>07/825,299</u>	<u> </u>	<u>January 23, 1992</u>	<u>abandoned</u>

STATEMENT OF WHOLE OR PARTIAL INOPERATIVENESS OR INVALIDITY

1. I believe United States Letters Patent No. 5,417,017 (the '017 patent) to be wholly or partly inoperative or invalid by reason of a defective specification for failure to state priority of Australian patent application PJ 6128, filed September 4, 1989 on the face of the patent.
2. I believe the '017 patent to be wholly or partly inoperative or invalid by reason of failure to identify all the prior art references cited to the USPTO on the face of the patent.
3. I believe the '017 patent to be partly inoperative or invalid by reason of claiming my invention in claims of a lesser scope than that to which I am entitled, and in terms which do not fully define the intended scope of my invention.
4. I have once stated an error upon which this reissue application is based in my Declaration signed May 16, 1997 and filed with the original filing papers for this reissue application. One or more of the errors previously stated in my Declaration signed May 16, 1997 are still being corrected through this reissue application.
5. All errors being corrected in the reissue application up to the time of filing this Supplemental Declaration arose without any deceptive intention on the part of the applicant.

DECLARATION

I declare that all statements made herein that are of my own knowledge are true and that all statements that are made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

DESIGNATION OF CORRESPONDENCE ADDRESS

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Full name of sole inventor: Vasilios Tontomtzis

Signature: X 19 / 10

Date: X 19TH JULY 1998

Residence: Sorrento, Australia

Citizenship: Australia

P.O. Address: 4 Nerida Place, Sorrento, Western Australia 6020, Australia

DECLARATION

IN ☐ ORIGINAL ☐ NATIONAL STAGE OF PCT APPLICATION
☐ DIVISIONAL ☐ CONTINUATION
☐ CONTINUATION-IN-PART ☒ REISSUE

Attorney Docket No.

T257.312-3

SPECIFICATION AND INVENTORSHIP IDENTIFICATION

As a below named inventor, I declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and ☒ solo ☐ joint inventor of the subject matter which is described and claimed, and for which a reissue is sought in the present application, on the invention entitled TERMITE CONTROL, the specification of which:

- ☒ is attached hereto.
- ☒ was filed on March 30, 1993 as Appln. Serial No. 08/040,305,
☐ and was amended on _____.
- ☒ and was granted as U.S. Patent No. 5,417,017 on May 23, 1995.
- ☐ was described and claimed in PCT International Application No. _____, filed on _____,
☐ and was amended under PCT Article 19 on _____.

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above, together with any amendment submitted herewith. I acknowledge the duty to disclose information which is known to me to be material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56.

PRIORITY CLAIM (35 USC § 119)

I claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)

Number	Country	Day/Month/Year Filed	Priority Claimed
<u>PL 7520</u>	<u>Australia</u>	<u>February 25, 1993</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>PL 6128</u>	<u>Australia</u>	<u>September 4, 1989</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PRIORITY CLAIM (35 USC § 120)

I claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below. Insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35 United States Code § 112, I acknowledge the duty to disclose to the Patent Office all information known to me to be material to patentability as defined in Title 37 Code of Federal Regulations § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

U.S. Serial No.	International Appln. No. (under PCT)	Filing Date	Status (patented, pending, abandoned)
<u>07/575,908</u>	<u> </u>	<u>August 31, 1990</u>	<u>abandoned</u>
<u>07/825,299</u>	<u> </u>	<u>January 23, 1992</u>	<u>abandoned</u>

STATEMENT OF WHOLE OR PARTIAL INOPERATIVENESS OR INVALIDITY

1. I am neither educated nor experienced in either Australian or United States patent law. United States Letters Patent No. 5,417,017 (the '017 patent) is the first U.S. patent sought and obtained by myself and TERMIMESH AUSTRALIA PTY LTD., assignee of the '017 patent.

2. I believe the '017 patent to be wholly or partly inoperative or invalid by reason of a defective specification for failure to state priority of Australian patent application PJ 6128, filed September 4, 1989 on the face of the patent.

3. The '017 patent issued from Application No. 08/040,305 (the '305 application) which in turn claimed priority from Application No. 07/825,299 (the '299 application). A priority claim to Australian patent application PJ 6128 was made in the Declaration which I signed for the '305 application on March 28, 1993, which Declaration was filed with the United States Patent and Trademark Office ("USPTO") on May 26, 1993. The Official Filing Receipt for the '305 application identifies the claim of priority to Australian patent application PJ 6128, as well as to Australian patent application PL 7520.

4. A certified copy of Australian patent application PJ 6128 was filed in the '299 application. I am informed and believe that the USPTO never requested an additional certified copy of Australian patent application PJ 6128 for the '305 application.

5. I believe the error of failure to state priority of Australian patent application PJ 6128 on the face of the patent arose, without any deceptive intention, in the printing of the '017 patent. I did not discover the omission of listing the claim of priority to Australian patent application until after issuance of the '017 patent.

6. I believe the '017 patent to be wholly or partly inoperative or invalid by reason of failure to identify all the prior art references cited to the USPTO on the face of the patent.

7. At my instructions, an Information Disclosure Statement was filed with the Patent and Trademark Office on June 25, 1993, identifying seventeen (17) references for consideration of the Examiner. The return postcard indicates that the Information Disclosure Statement was received by the Patent and Trademark Office on June 28, 1993. None of the references cited in the Information Disclosure Statement is listed in the "References Cited" section on the face of the '017 patent.

8. I believe the error of failure to identify the references cited in the Information Disclosure Statement in the "References Cited" section on the face of the '017 patent arose, without any deceptive intention, due to error by the USPTO. I did not discover the omission of the references until after issuance of the '017 patent.

9. I believe the '017 patent to be partly inoperative or invalid by reason of claiming my invention in claims of a lesser scope than that to which I am entitled, and in terms which do not fully define the intended scope of my invention.

10. To obtain patent rights in my invention, I retained the services of the Registered Australian Patent Attorneys from the Watermark firm of Perth, Western Australia ("the Watermark firm"). I discussed my invention with the Watermark firm, who prepared and filed Australian patent application PL 7520 and Australian patent application PJ 6128 at my instructions.

11. I requested the Watermark firm to seek patent protection for my invention in the United States. The Watermark firm retained the services of Kinney & Lange, P.A., Minneapolis, Minnesota, to follow their instructions in filing patent applications on my behalf.

12. My invention, as disclosed in my Australian and U.S. patent applications, involves the use of a mesh sheet material of appropriate pore size and hardness as a termite barrier. As disclosed in my Australian and U.S. patent applications, my invention also involves implementing the mesh sheet material as a termite barrier in a building structure, covering a cable, in a foundation structure for supporting a building, as a termite barrier flange, and enclosing a portion of a post or column embedded in the ground.

13. It was my intention that the patent include full coverage of the method of installing the wire mesh to the foundation of a building. Because I considered my U.S. and Australian patent applications fully described that invention, I believed my '017 patent adequately covered my invention.

14. After issuance of '017 patent, I retained the services of new Australian counsel beginning in January 1996, the Registered Australian Patent Attorneys of Wray & Associates of Perth, Western Australia ("my new counsel").

15. On or about April 23, 1996, I attended a meeting of the Board of Directors of TERMIMESH AUSTRALIA PTY LTD. At this board meeting, Dr. Laurie Glossop

reported about a trip he had made to Hawaii on behalf of TERMIMESH AUSTRALIA PTY LTD. in relation to trials of the patented system by the University of Hawaii Department of Entomology. Dr. Glossop further reported that he had attended a meeting with one Mr. Martin Hsia, a patent attorney of the firm of Cades, Schute, Fleming & Wright representing a Hawaiian franchisee of TERMIMESH AUSTRALIA PTY LTD. Dr. Glossop reported that Mr. Hsia had indicated that the patent would be better structured to include claims to a method of installation.

16. Subsequent to this board meeting, I discussed the matter with my new counsel. My new counsel explained to me for the first time that Australian and U.S. patent law have differences that affect the scope of protection that I had believed was provided by my '017 patent. In particular, I am informed that Australian patent law may allow the patenting of a new and previously unknown use for a known substance or structure without any specific requirements with regard to the drafting of the claims covering an invention of this type. My invention falls into this category, as it concerns the new and previously unknown use of a sheet material of specific pore size and hardness as a termite barrier, although the sheet material had previously been known for other, unrelated uses.

17. My new counsel confirmed Dr. Glossop's report that the claims of my '017 patent do not expressly cover the method of installation of the sheet material as a termite barrier. I had previously believed that the '017 patent did expressly cover such uses. In the circumstances, it appears that either I had failed to clearly convey to my previous counsel at the Watermark firm, and/or my previous counsel had not fully understood my instructions, that my patent should cover such uses.

18. As a result, I claimed less in the '017 patent than I had a right to claim. In particular, the original patent application and the issued '017 patent fails to state "method of termite barrier installation" claims for use of the termite barrier.

19. In particular, my invention entails, as defined by new claim 25, the method of termite

barrier installation during erection of the building structure on a slab of concrete at or near ground level which includes the step of positioning a sheet in association with at least a portion of the slab, the sheet being formed of a material resistant to breakdown in the environment of use and substantially resistant to termite secretions, the material having a hardness of not less than about Shore D70 for resistance to termite chewing, the sheet having pores wherein each pore has a linear dimension in all directions less than the maximum linear dimension of the cross section of the head of the species of termite to be controlled, to thereby exclude entry of termites into the building structure through said portion of the slab.

20. The method of termite barrier installation may also entail additional steps or further details as defined by dependent claims 26-40. In particular, my invention in certain embodiments entails:

- A. (As defined in dependent claim 26) A method of termite barrier installation wherein the sheet is positioned beneath the slab.
- B. (As defined in dependent claim 27) A method of termite barrier installation wherein the slab has a perimeter, wherein the sheet is positioned beneath the slab to extend to the perimeter of the slab in all directions and upwardly about said perimeter to terminate with an outer edge portion of the sheet at a distance above adjacent ground level.
- C. (As defined in dependent claim 28) A method of termite barrier installation wherein the outer edge portion of the sheet terminates above the slab.
- D. (As defined in dependent claim 29) A method of termite barrier installation wherein the slab is cast in-situ, and wherein the sheet is positioned prior to pouring of concrete over the sheet to cast the slab.
- E. (As defined in dependent claim 30) A method of termite barrier installation wherein the sheet completely covers a ground surface area where the slab is to be poured, and further comprising the step of contouring the sheet to closely follow contours of the ground surface area where the slab is cast.
- F. (As defined in dependent claim 31) A method of termite barrier installation

- wherein the sheet is positioned above the slab.
- G. (As defined in dependent claim 32) A method of termite barrier installation wherein the sheet is embedded in the slab.
- H. (As defined in dependent claim 33) A method of termite barrier installation wherein the building structure includes a termite resistant structure adjacent to and non-integral with the slab, and further comprising the step of integrally securing an outer edge portion of the sheet to the termite resistant structure.
- I. (As defined in dependent claim 34) A method of termite barrier installation wherein the integrally securing step comprises adhesively bonding the outer edge portion of the sheet to the termite resistant structure.
- J. (As defined in dependent claim 35) A method of termite barrier installation wherein the bonding is achieved using a bonding material which is resistant to termites.
- K. (As defined in dependent claim 36) A method of termite barrier installation wherein the integrally securing step comprises mechanically fixing the outer edge portion of the sheet to the termite resistant structure.
- L. (As defined in dependent claim 37) A method of termite barrier installation wherein the termite resistant structure is of concrete, and wherein the integrally securing step comprises casting the termite resistant structure in-situ such that the outer edge portion of the sheet is embedded into the termite resistant structure.
- M. (As defined in dependent claim 38) A method of termite barrier installation wherein the termite resistant structure is a wall of brick, and wherein the integrally securing step comprises constructing the wall of brick with the outer edge portion of the sheet embedded in the wall between two layers of bricks.
- N. (As defined in dependent claim 39) A method of termite barrier installation comprising the further steps of forming at least a portion of the sheet into a termite barrier flange; and clamping the termite barrier flange in pressure engagement about a perimeter of a member projecting through the slab.
- O. (As defined in dependent claim 40) A method of termite barrier installation wherein the termite barrier flange is formed by cutting an opening in the sheet,

said opening having a perimeter smaller than the perimeter of the member, and stretching and deflecting a marginal area of the sheet about the opening to form the termite barrier flange about the member.

21. The method of termite barrier installation of my invention also entails installation of a termite barrier strip between a concrete slab and an adjacent structure. In particular, my invention entails, as defined by new claim 41, the method of termite barrier installation in a building structure erected on a concrete slab at or near ground level and having an adjacent structure which is non-integral to the concrete slab and is termite resistant, the method comprising the steps of:

integrally securing a first marginal edge portion of a strip to a portion of the slab, the strip being formed of a material resistant to breakdown in the environment of use and substantially resistant to termite secretions, the material having a hardness of not less than about Shore D70 for resistance to termite chewing, the strip having pores wherein each pore has a linear dimension in all directions less than the maximum linear dimension of the cross section of the head of the species of termite to be controlled, the strip having a second marginal edge portion opposite the first marginal edge portion; and

integrally securing the second marginal edge portion of the strip to the adjacent structure, to thereby provide integrity between the slab and the adjacent structure against passage of termites and thereby exclude entry of termites into the building structure.

22. The method of termite barrier installation between a concrete slab and an adjacent structure may also entail additional steps or further details as defined by dependent claims 42-50. In particular, my invention in certain embodiments entails:

- A. (As defined by dependent claim 42) A method of termite barrier installation wherein the strip is integrally secured to the slab by adhesive bonding.
- B. (As defined by dependent claim 43) A method of termite barrier installation wherein the bonding is achieved using a bonding material which is resistant to

termites.

- C. (As defined by dependent claim 44) A method of termite barrier installation wherein the strip is integrally secured to the slab by mechanical fixing.
- D. (As defined by dependent claim 45) A method of termite barrier installation wherein the strip is integrally secured to the adjacent structure by adhesive bonding.
- E. (As defined by dependent claim 46) A method of termite barrier installation wherein the bonding is achieved using a bonding material which is resistant to termites.
- F. (As defined by dependent claim 47) A method of termite barrier installation wherein the strip is integrally secured to the adjacent structure by mechanical fixing.
- G. (As defined by dependent claim 48) A method of termite barrier installation wherein the slab is cast in-situ and wherein the strip is integrally secured to the slab by embedding the first marginal edge portion into the slab during casting.
- H. (As defined by dependent claim 49) A method of termite barrier installation wherein the adjacent structure is cast in-situ and wherein the strip is integrally secured to the adjacent structure by embedding the second marginal edge portion into the adjacent structure during casting.
- I. (As defined by dependent claim 50) A method of termite barrier installation wherein the adjacent structure comprises a wall of brick construction and wherein the strip is integrally secured to the adjacent structure by embedding the second marginal edge portion in the wall between two layers of bricks.

23. The method of termite barrier installation of my invention also entails installation of a termite barrier flange between a concrete slab and a member projecting through the slab. In particular, my invention entails, as defined by new claim 51, the method of termite barrier installation for a building structure, comprising the steps of:
positioning a termite barrier flange around a member projecting through a slab of concrete
at or near ground level, the termite barrier flange comprising an inner peripheral

portion defining an opening for the member and an outer peripheral portion extending from the inner peripheral portion;
establishing a seal against the passage of termites between the inner peripheral portion and the member; and
integrally securing the outer peripheral portion to the slab, such that the termite barrier flange protects against the passage of termites between the slab and the member projecting therethrough.

24. The method of termite barrier installation between a concrete slab and a member projecting through the slab may also entail additional steps or further details as defined by dependent claims 52-54. In particular, my invention in certain embodiments entails:

- A. (As defined by dependent claim 52) A method of termite barrier installation wherein the termite barrier flange is formed of a mesh material resistant to breakdown in the environment of use and substantially resistant to termite secretions, the mesh material having a hardness of not less than about Shore D70 for resistance to termite chewing, the mesh material having pores wherein each pore has a linear dimension in all directions less than the maximum linear dimension of the cross section of the head of the species of termite to be controlled.
- B. (As defined by dependent claim 53) A method of termite barrier installation wherein the slab is cast in-situ and wherein the termite barrier flange is integrally secured to the slab by embedding the outer peripheral portion into the slab during casting.
- C. (As defined by dependent claim 54) A method of termite barrier installation wherein the seal is established by clamping the inner peripheral portion in pressure engagement with the member about a perimeter of the member.

25. The method of termite barrier installation of my invention also entails installation of a termite barrier strip on a foundation structure. In particular, my invention entails, as defined by new claim 55, the method of termite barrier installation for a building structure

comprising the step of:

during erection of the building structure on foundation structure, covering the foundation structure with a termite barrier flange, the termite barrier flange being formed of a material resistant to breakdown in the environment of use and substantially resistant to termite secretions, the material having a hardness of not less than about Shore D70 for resistance to termite chewing, the material having pores wherein each pore has a linear dimension in all directions less than the maximum linear dimension of the cross section of the head of the species of termite to be controlled, to thereby exclude entry of termites into the building structure through said portion of the slab.

26. My new counsel also informed me that the claims of my '017 patent do not expressly cover the "termite barrier flange" by itself without separately requiring a mesh sheet. As explained to me for the first time after issuance of the '017 patent by my counsel at Wray & Associates, the claims of the '017 patent do not expressly cover a termite barrier flange which is used with a different type of termite barrier. I had previously believed that the '017 patent did expressly cover such termite barrier flanges. In the circumstances, it appears that either I had failed to clearly convey to my previous counsel at the Watermark firm, and/or my previous counsel had not fully understood my instructions, that my patent should cover such termite barrier flanges.

27. As a result, I claimed less in the '017 patent than I had a right to claim. In particular, the original patent application and the issued '017 patent fails to state "termite barrier flange" claims.

28. In particular, my invention entails, as defined by new claim 56, a termite barrier flange for preventing passage of termites between a cast concrete slab and a member projecting through the slab, said termite barrier flange comprising a body having an inner peripheral portion defining an opening in which the member is received and an outer

peripheral portion adapted to be integrally secured to the slab.

29. The termite barrier flange of my invention may also entail additional structural details as defined by dependent claims 57-61. In particular, my invention in certain embodiments entails:

- A. (As defined by dependent claim 57) A termite barrier flange wherein the outer peripheral portion comprises perforations adapted to be embedded in the slab during pouring of the slab for integrally securing the outer peripheral portion to the slab.
- B. (As defined by dependent claim 58) A termite barrier flange wherein the inner peripheral portion comprises a cylindrical sleeve adapted to be clamped in pressure engagement with the member about a perimeter of the member.
- C. (As defined by dependent claim 59) A termite barrier flange further comprising a clamp for clamping the cylindrical sleeve in pressure engagement with the member.
- D. (As defined by dependent claim 60) A termite barrier flange wherein the outer peripheral portion extends radially outward from the inner peripheral portion.
- E. (As defined by dependent claim 61) A termite barrier flange wherein the body is formed from a material substantially resistant to termite secretions and having a hardness of not less than about Shore D70 for resistance to termite chewing, the material having pores wherein each pore has a linear dimension in all directions less than the maximum linear dimension of the cross section of a head of a species of termite to be controlled.

30. My new counsel also informed me that the claims of my '017 patent do not expressly include limitations to the termite barrier provided as a roll, to the termite barrier including a plurality of strips secured together in a side-by-side relationship, or to the termite barrier in combination with a building structure including the re-entrant fold. As explained to me for the first time after issuance of the '017 patent by my counsel at Wray & Associates, none of the claims of the

'017 patent have express limitations directed at these features of my invention. In the circumstances, it appears that either I had failed to clearly convey to my previous counsel at the Watermark firm, and/or my previous counsel had not fully understood my instructions, that my patent should include dependent claims with limitations directed at these features of my invention.

31. As a result, I did not define the invention in the '017 patent in such scope as I had a right to claim.

32. In particular, the original patent application and the issued '017 patent fails to state dependent claims drawn to:

- A. (as defined by new claim 21) A termite barrier as claimed in claim 1 wherein the mesh sheet is in the form of a roll, whereby a strip of the mesh sheet can be removed from the roll as required.
- B. (As defined by new claim 22) The termite barrier as claimed in claim 1 wherein the mesh sheet comprises a plurality of strips of mesh material, the strips of mesh material being positioned in side-by-side relationship with adjacent edges of the strips overlapping one another and being secured together.
- C. (As defined by new claim 23) The termite barrier as claimed in claim 22 wherein the adjacent edges of the strips are secured together in a multi-fold lap-type joint.
- D. (As defined by new claim 24) The combination as claimed in claim 14 wherein the strip of termite barrier material has between the respective longitudinal marginal edge portions thereof a re-entrant fold which extends longitudinally to provide flexibility and freedom for movement of the concrete slab relative to the adjacent structure without fracture of the strip of termite barrier material.

33. I believe that my claiming less than I had a right to claim in the '017 patent arose without any deceptive intent. This arose through: (1) error and misunderstanding by myself in that I failed to convey the true nature of my

invention to my former counsel at the Watermark firm, and failed to adequately cover my invention in the claims of the '017 patent; and/or (2) error and misunderstanding by my previous counsel at the Watermark firm in that my previous counsel did not fully understand the true nature of my invention and failed to adequately cover my invention in the claims of the '017 patent.

34. Thus, the '017 patent was allowed to issue with the claims being overly restrictive as pointed out above. Therefore, to correct the aforesaid errors, the original claims 1-20 of the '017 patent need to be supplemented by additional and new claims 21-61 in this reissue application to more completely and distinctly claim the invention.

DECLARATION

I declare that all statements made herein that are of my own knowledge are true and that all statements that are made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

DESIGNATION OF CORRESPONDENCE ADDRESS

Please address all correspondence and telephone calls to Jeffrey D. Shewchuk in care of:

KINNEY & LANGE, P.A.
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POWER OF ATTORNEY

Attorney Docket No.

T257.312-3

Inventor(s): Vasilios Toutountzis

Title: TERMITE CONTROL

In the patent application:

- ☒ identified above (and submitted to the Patent and Trademark Office herewith).
☐ filed on _____ as application Serial No. _____

I appoint the following attorneys and agents to prosecute the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution and revocation:

Robert M. Angus
Michael R. Binzak
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Gena M. Chapman
Eduardo E. Drake
David R. Fairbairn
Philip F. Fox
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Reg. No. 24,383
Reg. No. 38,081
Reg. No. 39,616
Reg. No. 39,627
Reg. No. P-40,594
Reg. No. 26,047
Reg. No. 38,142
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Reg. No. 39,758
Reg. No. 26,316
Reg. No. 30,214
Reg. No. 37,235
Reg. No. 37,258
Reg. No. 30,514

I ratify all prior actions taken by Kinney & Lange, P.A. or the attorneys and agents mentioned above in connection with the prosecution of the above-mentioned patent application.

I authorize Kinney & Lange, P.A. to mark the appropriate space above and to insert the filing date and Serial No. of the application, as appropriate.

I authorize the attorneys and agents named herein to accept and follow instructions from Wray & Associates, as to any action to be taken in the Patent and Trademark Office regarding this application without direct communication between the attorneys and agents and the undersigned. In the event of a change in the persons from whom instructions may be taken, the attorneys and agents named herein will be so notified by the undersigned.

Please address all correspondence and telephone calls to Jeffrey D. Shewchuk in care of:

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Assignee or Owner: TERMEMESH AUSTRALIA PTY LTD.

Signature: [Signature]

Date: 16-MAY 97

Printed Name: Vasilios Toutountzis

Title: Managing Director

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For Reissue of
Patent No. : 5,417,017
Issued : May 23, 1995
Inventor : Vasilios Toutountzis
For : TERMITE CONTROL
Docket No. : T257.312-3

**ASSENT OF ASSIGNEE AND OFFER TO SURRENDER
ORIGINAL LETTERS PATENT
AND CERTIFICATE UNDER 37 CFR § 3.73(b)**

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

ASSENT AND OFFER TO SURRENDER

The undersigned assignee assents to the accompanying application and offers to surrender U.S. Patent No. 5,417,017.

CERTIFICATE UNDER 37 CFR § 3.73(b)

TERMIMESH AUSTRALIA PTY LTD., company is the owner of the entire right, title and interest in the patent application identified above by virtue of either:

A. ☒ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel 7296, Frame 0414, or a copy of which is attached.

OR

B. ☐ A chain of title from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at Reel _____, Frame _____, or a copy of which is attached.

2. From: _____ To: _____
The document was recorded in the Patent and Trademark
Office at Reel _____, Frame _____, or
a copy of which is attached.
3. From: _____ To: _____
The document was recorded in the Patent and Trademark
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a copy of which is attached.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and certifies, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

I hereby declare that all certified statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature: _____

Vasilios Toutountzis

Date: 16 MAY 97.

Title: _____

Managing Director

0425271-102199